

TRANSCRIPT OF PROCEEDINGS

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:

Entercom License, LLC
Application for Renewal of License for
Station KDND(FM), Sacramento,
California

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**Federal Communications Commission
Bureau / Office**

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MB Docket No. 16-357

Facility ID No. 65483

File Nos.
BRH-20050728AUU and
BRH-20130730ANM

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	:MB Docket No. 16-357
	:
ENTERCOM LICENSE, LLC	:Facility ID No.
Applications for Renewal of:	:64583
Station KDND(FM),	:File Nos.
Sacramento, California	:BRH-20050728AUTI and
	:BRH-20130730ANM
	:

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DEC -2 2016

Volume I

Tuesday,
November 22, 2016

Federal Communications Commission
Bureau / Office

Hearing Room TW-A363
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C.

The above-entitled matter came on for status
conference, pursuant to notice, at 10:30 a.m.

BEFORE:

THE HONORABLE RICHARD L. SIPPEL,
Chief Administrative Law Judge

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ALSO PRESENT:

RACHEL B. FUNK, Attorney Advisor,
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P-R-O-C-E-E-D-I-N-G-S

(10:31 a.m.)

JUDGE SIPPEL: This is the case of Entercom License, applications for renewal of KDND in Sacramento. It's MB Docket number 16-357. And this is our first pre-hearing conference.

What I want to do today is I want to find out when you can be ready for trial. It's got to be before the 28th of July, because the Commission made me do that. I mean, I'm not doing that myself. I'm being told to do that.

So, we have to start with that anyway. And I'd like to ask you quite a bit about the evidence. I'm mostly interested, of course -- Good morning, Mr. Solomon. I'm sorry.

MR. SOLOMON: Good morning.

JUDGE SIPPEL: Mr. Kirk.

MR. KIRK: Good morning.

JUDGE SIPPEL: Good morning. I don't know the other two gentlemen.

MR. LINDSAY: Wade Lindsay, Your Honor, Wilkinson Barker.

MS. MAGO: Jane Mago with Entercom.

JUDGE SIPPEL: Mago. Former general counsel. Okay. And on this side?

MR. COUZENS: Michael Couzens for Sue Wilson and

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1 Media Action Project.

2 JUDGE SIPPEL: Okay. And you're with enforcing
3 bureau?

4 MR. ENGEL: Michael Engel from the Enforcement
5 Bureau, Your Honor.

6 MS. KANE: I'm Pamela Kane from the Enforcement
7 Bureau, Your Honor.

8 JUDGE SIPPEL: Okay.

9 MR. SOLOMON: And just for the record, since he
10 said hello, I'm giving my name. I'm David Solomon for
11 Entercom License. All of us for Entercom License.

12 JUDGE SIPPEL: I understand that. Thank you, Mr.
13 Solomon. Mr. Couzens, do you want Mr. Couzens at that table,
14 or do you want him down at the end?

15 MR. KIRK: I think when we get to a trial it might,
16 a little separation might be okay. But we're fine today, Your
17 Honor.

18 JUDGE SIPPEL: Okay.

19 MR. ENGEL: So, you're not in the Bureau of
20 Enforcement, Mr. Couzens?

21 MR. COUZENS: No. Never have been, actually.

22 JUDGE SIPPEL: Everybody in the courtroom, I've
23 gone back, this is not my first experience with them. Okay.
24 Including Mr. Couzens, by the way.

25 So, that's what I'm interested in. Now, the date

1 that's set is July 27th or 28th. It's on a Friday, which is,
2 it's July 28th. So, this can't be done anyway. But I'm going
3 to make a change. I want to make the change up, in other
4 words, earlier than the 28th.

5 But without talking about any dates, does anybody
6 have, have you had a chance to talk about when you might be
7 ready to go to trial? What's your best estimate?

8 MR. SOLOMON: Yes, Your Honor. Entercom's view is
9 that it should be in late July. This is a case that involves
10 going back for a license, their terms until 1998. So, we need
11 to get 20 years of evidence about its programming and public
12 service.

13 And it's about a trial that was several years ago,
14 the contest that was more than nine years ago. And even at
15 the level of just getting access to the trial record, I mean,
16 we've talked to the Bureau about this. But we don't have at
17 this point full access to the trial record. So, it's going
18 to take time to build our case.

19 JUDGE SIPPEL: You mean the trial record in the
20 state court?

21 MR. SOLOMON: In the state court.

22 JUDGE SIPPEL: Really?

23 JUDGE SIPPEL: Entercom has been talking to its
24 counsel in that case. And we'll see what they have in
25 storage. And at this point it's not clear.

1 JUDGE SIPPEL: Where was it done? In California
2 in state court?

3 MR. SOLOMON: California, yes. But basically it's
4 about almost 20 years of the station's license terms. So, it
5 takes time to develop the evidence. So, we'd suggest that it
6 be in late July.

7 JUDGE SIPPEL: Yes. I was anticipating that.
8 Otherwise, I would have collapsed on the bench. I figure it's
9 going to be sort of heavy record. All right. Well that tells
10 me.

11 Let me, I'll move on to what I want to do. But I
12 can accommodate that. And I'm going to tell you how I'm going
13 to do it. What I'm going to do is, I'm going to find a date
14 that's convenient for all of us before July 28th. For me it
15 has to be before July 22nd, which happens to be a Saturday.

16 And this might be a task in and of itself. What
17 I'm going to try and do is have a, this will take us a week
18 probably, to have an admissions session and opening
19 statements. And then recess.

20 Now, again, if it can't be done, it can't be done.
21 But because I'm running up against a date that's been set by
22 the Commission, I'm going to have to have a basis to change
23 it.

24 So, you're going to have to file with me a leave
25 to, just file a motion for, you know, extraordinary motion for

1 extraordinary circumstances if that date has to be extended
2 because of your discovery. And that's no problem. That's no
3 problem.

4 But it has to be, and I'm sure that with the
5 lawyers in this room, I'm sure it will be a fine motion. So,
6 I'm not worried about that. Is that okay with you, ma'am?

7 MS. KANE: Oh, actually, Mr. Engel's going to
8 handle it.

9 MR. ENGEL: Yes, Your Honor. Yes, Your Honor,
10 that's fine. So, we just have, you want to peg a date before
11 July 22nd?

12 JUDGE SIPPEL: Yes. Well --

13 MR. ENGEL: We have our schedules --

14 JUDGE SIPPEL: No, no, no.

15 MR. ENGEL: -- here, if --

16 JUDGE SIPPEL: July 28th is the day I'm going to
17 put. But that's for purposes of setting a date at this time
18 for an admissions session. And if that can't be accommodated
19 in light of what we're talking about, you know --

20 MR. ENGEL: Is it Your Honor's opinion that the
21 admission session commences the hearing?

22 JUDGE SIPPEL: Yes, it does.

23 MR. ENGEL: Thank you, Your Honor. That's the
24 point --

25 JUDGE SIPPEL: Absolutely.

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1 MR. ENGEL: -- I wanted to clarify.

2 JUDGE SIPPEL: In fact, you see, you can even make
3 opening statements if I'm wrong on that. But absolutely.

4 MR. ENGEL: Thank you, Your Honor.

5 JUDGE SIPPEL: I've always considered to be
6 admission sessions, and in this case particularly. Because
7 it's going to be one heck of an admissions session I suspect.

8 But anyway, let's just leave it at that. And I'll
9 set a date. Or, I don't want to pull an arbitrary date. But
10 I'll set the date that I think is realistic for me. And if
11 it becomes unrealistic for you, particularly Mr. Solomon's
12 side, file a motion.

13 MR. SOLOMON: We appreciate that, Your Honor.

14 JUDGE SIPPEL: Now, on your side of the table, do
15 you have any problem with this arrangement, this schedule,
16 how, the way I'm doing it?

17 MR. ENGEL: No, Your Honor, not at all. Not at
18 all. We had talked, we had contacted both the other parties,
19 Your Honor. And we had thought that Tuesday, July 25th was
20 open. But given, we didn't know Your Honor's schedule in this
21 case. But we'll be flexible, and we'll work around your
22 schedule, Your Honor.

23 JUDGE SIPPEL: Okay. All right. Okay. So, Ms.
24 Kane, here's what I want to do. I want to say, ask most of
25 the questions to Mr. Solomon's side of the table. Because I

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1 want to know what evidence he's talking about, for purposes
2 of these issues. Just a general description of it. Not
3 specific. Just a general description on each of these issues.
4 And I'll have questions about it.

5 But before I do that, Ms. Kane, is there something
6 from your side of the table that you want to bring to my
7 attention as a preliminary matter, or anything?

8 MS. KANE: I don't think so, Your Honor. I think
9 much of how this case is going to proceed is going to depend
10 on how cooperative Entercom License is in some of the early
11 stages.

12 For example, we do intend to serve requests for
13 admission, a rather comprehensive set of them, to try to
14 narrow the issues going forward significantly.

15 And that could dramatically reduce both the time
16 that we would need for discovery, the number of witnesses that
17 would need to be deposed, and the number of witnesses that
18 would need to be at trial. And obviously the length of trial.

19 So, I'm as curious as you are to hear what Entercom
20 might say today in response to some of your questions.
21 Because I think that might help us get a better sense of how
22 they're going to proceed.

23 JUDGE SIPPEL: Okay. That's fine. I mean, that
24 sounds like a, you know, I think that's a good idea on how to
25 proceed on this from your side of the table.

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1 But I would suggest, and maybe I'm wrong on this.
2 But I would suggest meeting with Entercom's attorneys, and
3 seeing if there's some way, is there anything possible
4 anyplace that you can stipulate over 20 years of evidence, is
5 the one.

6 MR. SOLOMON: And, Your Honor, just to respond to
7 that. We actually have talked to the Enforcement Bureau last
8 week. And we're very open to the concept of developing
9 stipulations.

10 So we, our approach is we plan to cooperate with
11 both the other parties to try to develop a record in a way
12 that the hearing can move forward as the Commission wanted,
13 hopefully within that time period, in a way that doesn't
14 overburden Your Honor or either of the parties.

15 So we're -- obviously the devil is in the details.
16 But we're very open to the concept of working with the Bureau
17 to come up with hopefully fixed joint stipulations with all
18 the parties that could reduce what needs to be done at trial.

19 JUDGE SIPPEL: Excellent. So, but I'm, that's
20 going to require, I know it's going to require time. It has
21 to require time. Hold off on your request for admission until
22 the stipulation exercise is over.

23 MR. ENGEL: Your Honor, per the rules, we have
24 until December 6th to get those out. And we've prepared,
25 we're prepared to serve those early next week.

1 MR. KIRK: The rules, Your Honor, the rules do
2 permit you to set a different timeframe for admissions. So,
3 given your desire, and the parties' desire to work with
4 stipulations, I would suggest that you can extend that
5 timeframe.

6 JUDGE SIPPEL: All right. Who's right, and who's
7 wrong.

8 MS. KANE: Well, the rules obviously give Your
9 Honor discretion.

10 JUDGE SIPPEL: Well, that's good enough for me.
11 I just --

12 MS. KANE: If you would prefer that we work through
13 a stipulation process, we can do that. But obviously we are
14 going to have other discover that needs to be served. And it
15 is a truncated time period.

16 I mean, even if you're looking at an admissions
17 session in mid-July, let's say, you're looking at potentially
18 somewhere, you know, anywhere from six weeks to two months
19 prior to that to -- Because this, I expect this to be a very
20 highly, a document-intensive case.

21 And therefore, things like getting the documents
22 ready for, and opposing them for the admissions session is
23 going to take time.

24 JUDGE SIPPEL: It is.

25 MS. KANE: So --

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1 JUDGE SIPPEL: That's why I say, don't take your
2 time up writing these monstrous request for admissions. Focus
3 on the issue at hand, stipulations. There's going to be a lot
4 of negotiation, I'm sure, on that. And you're going to have
5 to go into the record pretty deep too. So, I don't see why
6 we want to fool around with discovery at this stage of the
7 game.

8 MR. SOLOMON: And I would add in support of that,
9 Your Honor, that, you know, particularly with some
10 combinations of Issues, A through G, which are called the
11 "contest related issues," that I think there can be a lot of
12 work on stipulations, such that there won't be heavy document
13 production on those issues.

14 Because, again, if we can reach stipulations, or
15 at least stipulations on many of those issues, then there
16 won't need to be a lot of document production. So, or other
17 discovery. So, we strongly agree that it would be helpful to
18 have the parties work intensively together, starting next
19 week.

20 JUDGE SIPPEL: Yes.

21 MR. SOLOMON: And, you know, I know from talking
22 to the Bureau they've started drafting some things. So, those
23 can be the basis certainly for discussions we have of
24 potential stipulations, and those sorts of things. But, I
25 mean, that would be very productive in our view, Your Honor.

1 MR. ENGEL: Obviously you've seen the hearing
2 designation order. The Commission designated this for
3 hearing. Largely it surrounded, it's the facts that
4 surrounded the civil bureau, or civil trial, the 2007 civil
5 trial.

6 JUDGE SIPPEL: Yes.

7 MR. ENGEL: We don't think many of those facts were
8 disputed at the trial. It was how contributory and negligent
9 the victim was or wasn't in the case.

10 We don't think that there would be an issue with
11 stipulating to all the facts as alleged in the HDO, because
12 those facts came out at the trial, and weren't, it is my
13 understanding they were not disputed.

14 I don't speak for Mr. Couzens either, or what
15 evidence that the licensee will bring to bear. But as far as
16 the contest and the surrounding facts that are basically set,
17 they're set out straightforward in the HDO, we think that's
18 the basis of the stipulations.

19 JUDGE SIPPEL: Well, I miss, it would be better to
20 ask Mr. Solomon to explain that one. What, you know,
21 obviously there's a public interest issue. And you want to
22 put God knows how many years of records of broadcasting in.
23 Am I correct on that? Isn't that what you were talking about?

24 MR. SOLOMON: Yes. To speak at a high level. And
25 obviously the details are going to matter here. But at a high

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1 level, obviously the company recognizes that the contest was
2 a tragic event, was an unfortunate event, whatever adjectives
3 one wants to use.

4 From our perspective, if we can stipulate as to
5 many of those issues, whether that's stipulating to some facts
6 in the trial record, you know, there's a lot of potential
7 subtleties there. Whether it's to stipulating to certain
8 conclusions that both parties can agree to with respect to the
9 issues, you know, that's to be explored.

10 But in terms of, assuming that process is
11 successful, and there can be stipulations on much of Issues
12 A through G, our focus at trial would then be putting on
13 evidence to show that regardless of the conclusion over here,
14 with respect to the contest issues, that that's, the weight
15 of the evidence in light of programming and other public and
16 community service over the last 20 years outweighs whatever
17 happened with respect to that four and a half hour contest.

18 MR. ENGEL: Your Honor, it's our intention to
19 aggressively work out stipulations with Entercom. But we are,
20 the Bureau will be greatly disadvantaged if we don't serve
21 discovery soon. We have a very truncated time period. And
22 if we can't get the discovery we want, or we don't get the
23 stipulations we want, we'll have to proceed with depositions,
24 Your Honor.

25 And so, we'll be, we would prefer to be able to

1 serve that, to serve discovery soon, so we can move forward
2 with the case. And at the same time try to work out the
3 stipulations. But we need to get out our discovery requests,
4 Your Honor.

5 JUDGE SIPPEL: I think the most important thing is
6 the stipulations.

7 MR. ENGEL: I don't disagree with Your Honor. But
8 if Entercom's not down to stipulate to anything, if they
9 decide not to stipulate we are disadvantaged in the shortened
10 timeframe.

11 JUDGE SIPPEL: I think it's going to be awhile
12 before we come to that conclusion. This is not going to be
13 an overnight thing. And I don't want either side -- I don't
14 want Mr. Solomon's side to be having to put up with these
15 requests for admissions while this exercise, not exercise,
16 this intensive negotiations over stipulations is going on.

17 And I don't want any distraction in the case. So,
18 I mean, I'm not going to, if you've got, if you want discovery
19 that bad, then you're going to have to come to me for leave
20 to file. But I'm telling you right up front, I doubt that I'm
21 going to grant it, because you don't need it.

22 And I am not, believe me, I am not locked in by
23 that 28th July date. There is authority. The last time I had
24 carriage cases -- not the last time, the first time I had
25 carriage cases, it was one of the Bureau's that wanted to

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1 stick me with making a decision at 60 days, or something.

2 MR. SOLOMON: I could remind you of that
3 experience, Your Honor.

4 JUDGE SIPPEL: You know it. And the Commission
5 found that to be, not reprehensible, but not the wisest thing
6 to do. And they said that whatever it takes to get, to do
7 justice, due process, and all those considerations, is what
8 I can do.

9 MR. ENGEL: If I might, Your Honor, we have, we are
10 at the closing stages of drafting our request for admissions,
11 Your Honor. The request for admissions we think essentially
12 are the construct for the stipulations.

13 JUDGE SIPPEL: Well, that's what Mr. Solomon said.
14 Bring them along, and you can send it to him today. But I
15 don't want a deadline on it. I'm not going to sign a deadline
16 to them. You can use that as the structure for the
17 stipulations.

18 MR. SOLOMON: Perhaps --

19 JUDGE SIPPEL: I mean, you've done good work.

20 MR. SOLOMON: Perhaps they could just send them to
21 us as drafts. And then that would structure the stipulation.

22 JUDGE SIPPEL: Yes.

23 MR. SOLOMON: And then, I mean, we certainly intend
24 to work in good faith on that. And if at a certain point you
25 determine that it's not working, come back to the Judge.

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1 JUDGE SIPPEL: Yes.

2 MS. KANE: Your Honor, I guess what our point is
3 that we've got what I believe is a very comprehensive
4 assessment of the underlying facts, and other issues that may
5 go to some of, you know, the Issue G and Issue H issues in the
6 HDO, with regard to the 20 year timeframe.

7 And I think, depending on how they would answer
8 those requests for admissions we would only need stipulations.
9 But if, for example, they admit to all of that, then you've
10 narrowed tremendously the case. And you'd only need
11 stipulations on things that they wouldn't have otherwise
12 admitted to.

13 And it will also put the Bureau in a much better
14 position to determine the discovery. I mean, as I'm sure you
15 can imagine, we are really going to be -- If this takes, we
16 have a timeframe pursuant to the rules that allows the request
17 for admissions, and a timeframe for them to respond to those.

18 A stipulation process, particularly with the
19 holidays, could take a lot of time. And we're looking at
20 maybe the early part of January before the Bureau can even
21 serve its discovery.

22 JUDGE SIPPEL: That's okay. What's wrong with
23 that? My point is --

24 MS. KANE: It's a concern, Your Honor.

25 JUDGE SIPPEL: I, believe me --

1 MS. KANE: Obviously for the Bureau, who, you know,
2 is going to have potentially an entire case that hasn't been
3 established in the HDO.

4 If, even if they were to actually admit to
5 everything in the HDO, we've got an entirely new potential
6 area of discovery that we would need to serve on them. And,
7 you know, you're looking at potentially five months. That's
8 a very truncated time period.

9 JUDGE SIPPEL: I understand. And it's not going
10 to be a truncated time period if I'm managing this case. And
11 I'm going to manage this case. This is not going to be the
12 usual sit back and wait until the attorneys are done.

13 I mean, I'm going to be on top of this case. And
14 if somebody, if there's a management problem with moving it
15 forward I want to be a part of it. I don't want to be part
16 of the problem, but I want to know about it.

17 And at this, to me this just doesn't make any
18 sense. Because you're getting the benefit. You're going to
19 start with your, let's call it a draft of your discovery.

20 They're going to take a look at that draft. You're
21 going to sit down at a round table, square table, any kind of
22 working table. And you're going to start the stipulation
23 process. So, they're going to have an outline of what you
24 want. And they're going to feed you this information across
25 the table.

1 How can that hurt you? How can that conceivably
2 hurt you? I just don't see it. I mean, well, I'm not going
3 to grant what you're requesting. I'm not going to allow it
4 anyway.

5 MS. KANE: Well, Your Honor, I would ask that we
6 put a timeframe on the stipulations, so that the Bureau isn't
7 unduly prejudiced by having it dragged out unnecessarily.

8 JUDGE SIPPEL: Mr. Solomon is not going to drag
9 things out. If he does, and God forbid it, but you'll be back
10 in court here. Everybody will be.

11 The point is, you know, he will -- Well, let me see
12 how, what I'm going to say. He doesn't know yet what the
13 timeframe is going to be, because he hasn't looked at the --
14 This is a big process, this kind of stipulation, huge.

15 MS. KANE: I think at least, Your Honor, we should
16 put some sort of timeframe on it. I mean, obviously we're in
17 a position where we've got parting on the other side. It
18 behooves them to drag this out. So, anything --

19 JUDGE SIPPEL: What does he want to do that for?

20 MS. KANE: -- that he has --

21 JUDGE SIPPEL: What does he want to drag it out
22 for? I check my insurance. I mean, my life expectancy is
23 pretty good. I'm not just going to drag it out, right. For
24 God sakes, I'm not going to let that happen.

25 Now, I'll ask Mr. Solomon if, I'll maybe give you

1 a time period. So, if you would estimate what the timeframe
2 is going to be, for what? For the stipulations? Or for me
3 doing it? What are you talking about?

4 MS. KANE: Your Honor, you would, it sounds like,
5 prefer for us not to proceed with RFAs, and try to narrow the
6 case that way, but to try to narrow them from stipulations.
7 So, we would like there to be some timeframe by which the
8 parties --

9 MR. ENGEL: Right.

10 MS. KANE: -- should be able to either stipulate
11 or not stipulate, so that the Bureau can move forward with its
12 discovery.

13 MR. ENGEL: Right.

14 JUDGE SIPPEL: Here's an easy answer. Here's an
15 easy answer. I'll have end of the month status reports every
16 month. And if something is going wrong, you feel something
17 is going wrong, somebody's acting in bad faith, you can always
18 file a motion with me to compel it and do something.

19 I'm saying, this is a different kind of case. And
20 this, the normal structure of going through the rules of
21 discovery is the last thing that anybody wants to do.

22 MS. KANE: Your Honor, there's probably some issues
23 that we can't stipulate to.

24 JUDGE SIPPEL: There will be. There will be.

25 MS. KANE: No. But what I'm asking, Your Honor,

1 is that we be able to serve discovery, for example, on this
2 broader public 20 years process, which is not something that's
3 identified in the HDO. So, if we could at least start that
4 process now, I don't imagine that that's going to be something
5 that we can stipulate to.

6 JUDGE SIPPEL: I told you before, Ms. Kane, I don't
7 want counsel to be working on two, making two shifts at the
8 same time. The stipulation process is the most important
9 thing to me.

10 We know how people respond to, that there's no
11 request for admissions that can be crafted that is going to
12 be smooth enough to easily respond to. I know that.

13 It just can't, I've never seen it being done.
14 Unless you're talking about, you know, you're talking about
15 who was president, or who was this, or who was that? We're
16 not talking about that.

17 MS. KANE: Your Honor, I respectfully disagree with
18 that. That's the whole process by which a request for
19 admissions are crafted. But, and I --

20 JUDGE SIPPEL: Well --

21 MS. KANE: -- believe that they are crafted
22 probably no differently than a stipulation would be crafted.

23 JUDGE SIPPEL: Well, okay. Well let me --

24 MS. KANE: If there's, we were addressing facts
25 that have already been established in many instances in an

1 underlying litigation.

2 JUDGE SIPPEL: I hear you. Let me walk that back
3 a little bit. Of course it's going to depend on the case.
4 There are some cases where request for admissions are
5 pertinent. And we've had a case like that.

6 So, but this is not one of those cases. At least,
7 I don't see it as. Now, if we're filing status reports each
8 month -- and the first one will be the end of January -- I
9 don't think it will make, making a status report in December
10 makes any sense.

11 And you always have the remedy of filing a motion
12 with me to compel. To compel something or to do something.
13 And I'll be Johnny on the spot with that.

14 MR. ENGEL: Your Honor, if I --

15 JUDGE SIPPEL: Let me try it.

16 MR. ENGEL: If I may frame the greater case? Okay,
17 so --

18 JUDGE SIPPEL: Yes, sir.

19 MR. ENGEL: There is the contest, and the events
20 surrounding the contest. We think that we'll probably be able
21 to reach stipulations on likely all of that. Those are facts
22 that came out in the underlying trial.

23 We are, however, the Bureau, however, is operating
24 in the dark about what else the licensee is going to bring in
25 over the 20 year period.

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1 JUDGE SIPPEL: I'll have Mr. --

2 MR. ENGEL: And so, we can't even propose a
3 stipulation there --

4 JUDGE SIPPEL: Wait a minute.

5 MR. ENGEL: -- or verify it.

6 JUDGE SIPPEL: He's not prepared to, it's going to
7 take maybe a month to get things together before he can, for
8 Mr., I'm sorry, for Mr. Solomon to get his ducks in a row to
9 approach you with this.

10 So, if there's portions, partial things that you
11 can get by stipulation, even if it's just restricted to these
12 Issues A through whatever, G, that's going to be, that's
13 progress. That's progress.

14 MR. SOLOMON: And I would add, Your Honor, that on
15 the, I think we can work on the contest issues, and on the
16 licensee record issues. We need to develop our case. We
17 don't know who our witnesses are. We don't know exactly what
18 we'll be producing.

19 So, again, I think it's productive to focus on
20 stipulations, so that we're not here asking for extensions of
21 time on all sorts of discovery requests, so that we can focus
22 on the stipulations, or because we don't know the answers yet
23 to various requests.

24 JUDGE SIPPEL: You're -- I mean, this is why I'm
25 hearing it. That's why I'm saying it. I don't want to spend

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1 my time coming in here for motions to compel answers to, you
2 know, requests for admissions. I don't, I think that's just
3 going to be a waste of time until you get down to the guts.

4 I mean, for sure, you're going to say, we disagree
5 with this specific point of fact, you know. But you haven't
6 reached that yet. You don't know what you're going to
7 disagree to. And --

8 MS. KANE: We know for a fact, Your Honor, we can't
9 agree to things we don't know about yet.

10 JUDGE SIPPEL: Well, that's why --

11 MS. KANE: So, we should be entitled to send at
12 least an initial discovery on the areas that aren't fleshed
13 out in the HDO.

14 JUDGE SIPPEL: You're going to get that. If you're
15 not getting it, believe me, we'll be right back here. I'm
16 going to ask Mr. Solomon today to give you a broad picture,
17 okay, and me too.

18 And as you get into the stipulation process you're
19 going to get more, and more, and more input. You're going to
20 know. He's not trying to surprise anybody. He's got to put,
21 he's got to make a strong case on the public interest side.

22 So, and I'm suspecting that he knows that better
23 than I do. So, you're not going to be surprised. I'm telling
24 you. This is not a surprise case. Okay. Well, I haven't --

25 MR. COUZENS: May I be heard, Your Honor?

1 JUDGE SIPPEL: -- convinced you. But let's move
2 ahead.

3 MR. COUZENS: May I be heard on that?

4 JUDGE SIPPEL: Absolutely. Absolutely, Mr.
5 Couzens.

6 MR. COUZENS: With our very limited resources --

7 JUDGE SIPPEL: Now, could you -- Before you do
8 that, would you describe what your role in this case is? Are
9 you as an intervener? Or, what are you here as?

10 MR. COUZENS: I am the attorney for the successful
11 petitioner, who got issues added against this renewal
12 application.

13 JUDGE SIPPEL: And who is that?

14 MR. COUZENS: Sue Wilson and the Media Action
15 Project.

16 JUDGE SIPPEL: Okay. Thank you.

17 MR. COUZENS: Okay.

18 JUDGE SIPPEL: Did you file a motion, did you file
19 a --

20 MR. COUZENS: An appearance?

21 JUDGE SIPPEL: -- an appearance?

22 MR. COUZENS: Yes, sir.

23 JUDGE SIPPEL: Okay. It hasn't worked its way up
24 to me. But that's fine.

25 MR. COUZENS: Okay.

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1 JUDGE SIPPEL: I'm not going to ask the Bureau
2 that. In fact --- forget about it.

3 MR. COUZENS: It's far beyond us to rehash the
4 tragic incident, all that history. What I want to focus on
5 as an area where we may be able to do some good, particularly
6 since the public file is located in Sacramento. And as are
7 my client --

8 JUDGE SIPPEL: That's the trial file?

9 MR. COUZENS: And I am in California as well.

10 JUDGE SIPPEL: I'm sorry.

11 MR. COUZENS: I am in California as well.

12 JUDGE SIPPEL: You are.

13 MR. COUZENS: The public file is located in
14 Sacramento.

15 JUDGE SIPPEL: You are.

16 MR. COUZENS: It has been there. I want to focus
17 on Exhibit 12 in the renewal application, which represents
18 that they have complied with all the requirements for the
19 public file. States that it is based on inquiries of current
20 employees who were knowledgeable of the contents.

21 And what my intent was, before I came to this
22 meeting, was as soon as possible to propound interrogatories
23 to say who prepared Exhibit 12? Who are those people that you
24 talked to? Who is the person most knowledgeable about the
25 public file?

1 Now, that's a handful of questions that I have.
2 If I understand your ruling, I'm going to have to go through
3 countless hours of discussions about stipulations, and never
4 get those interrogatories on the table.

5 JUDGE SIPPEL: No, Mr. Couzens, that's not going
6 to be the case. Don't get excited about this.

7 MR. SOLOMON: Your Honor. Sorry, I didn't mean to
8 interrupt.

9 JUDGE SIPPEL: Oh, go ahead. Tell me.

10 MR. SOLOMON: No. I was just going to say that the
11 issues that he's talking about seeking discovery on were
12 issues that he raised in his petition to deny. And the
13 Commission did not include them in the hearing designation
14 order.

15 So, it's not clear that, I don't know the exact
16 scope of his discovery. But as he's describing it, it's not
17 entirely clear to me that it's relevant.

18 JUDGE SIPPEL: Well you --

19 MR. COUZENS: Well, that's an objection that could
20 be presented in lieu of the response to the questions.

21 JUDGE SIPPEL: Okay, Mr. Couzens. I've worked,
22 I've had Mr. Couzens in another case. Go ahead. I'm making
23 an exception in your case. You can proceed with your de
24 minimis discovery. And it will be responded to as Mr. Solomon
25 outlined. And I can rule on that as a separate matter.

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1 Because I don't want to put you through the process of
2 this. Obviously you can't afford to go through this process
3 that we're talking about here. I mean, I'm talking about the
4 stipulation process. And I don't think you have an interest,
5 that much of an interest in it. But maybe I'm wrong about
6 that. Because you're going to get the benefit --

7 MR. COUZENS: Well, I'm happy to provide what small
8 insight I can to the Enforcement Bureau, or to the tryer of
9 fact. That's all I can do. But I can't do a lot.

10 JUDGE SIPPEL: Well, I've heard that before. Okay.

11 MS. KANE: Well, Your Honor, just to clarify, we
12 would need to make sure that all parties had agreed to the
13 stipulations. We have had that issue before as well, where
14 a party has not agreed to joint stipulations that have been
15 reached by other parties. And that's been a difficult issue
16 moving forward.

17 So, Mr. Couzens represents a named party in this
18 case. And he needs to have his party make sure that they're
19 signed off on the stipulations. Otherwise, the stipulations
20 really don't hold much weight.

21 JUDGE SIPPEL: Well, if Mr. Couzens wants to sit
22 in on a stipulation, he's welcome to. But that's exactly what
23 his point is. I mean, he doesn't want to be put to that
24 burden. But I'll say that, Mr. Couzens, you can come and go
25 as you please.

1 Or maybe you, maybe one of the parties, or both of
2 the parties would let you know what the subject of the next
3 stipulation is. And if it strikes you as something that
4 you're very interested in, you can show up to that.

5 MR. COUZENS: Well, Your Honor, from my standpoint,
6 I was delighted to hear that the Enforcement Bureau wanted to
7 put out requests for admissions. Because then you have
8 binding statements of facts, or denials of facts. We could
9 work with that, and narrow the issues quickly.

10 This idea of stipulations seems to me an open ended
11 nightmare that could go on and on with tremendous, no clear
12 grounds for how many interactive processes would take place.
13 And I won't be part of it. I don't have the time. I'll try
14 to be as cooperative as I can. But I don't have the time for
15 that.

16 Now, I do have the time to receive requests for
17 admission, and to review the responses to them. And to say,
18 oh great, these are legally binding answers. We've closed off
19 all of these areas of potential issues. This part of the case
20 is done. I like that.

21 JUDGE SIPPEL: Well, I'm sure you do. But this is
22 not an intercession case. I don't want, I've told you, I
23 don't want either side, either party to be bogged down with
24 requests to admit. And as Ms. Kane indicated, hers is going
25 to be pretty voluminous. That doesn't make any sense to me.

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1 She's going to show you what she, she's going to
2 show both sides what they want. You're going to get access
3 to status reports. If a point in time comes that it's not
4 working, then let's get together again, and we'll fix it.

5 But I think I have, I think I'm entitled to at
6 least have you start the process, and see how it works. It's
7 on a month by month basis, because there's going to be a
8 status report at the end of January.

9 MR. COUZENS: Well, Your Honor --

10 JUDGE SIPPEL: Now, your situation, with respect
11 to a few interrogatories, I'm saying I could an exception to
12 that. Because I don't think that's going to bog anybody down.

13 MR. COUZENS: No. But could I suggest this? As
14 far as the stipulation process that you're encouraging, could
15 the parties -- these parties and us, for that matter -- be
16 given a deadline by which the things they want stipulated to
17 are set forth?

18 And then each side will come up with a list in
19 writing. And you have some basis for discussion. Otherwise,
20 I'm afraid it will be so vague that there will be a status
21 report, and the status is that no progress was made from the
22 last --

23 JUDGE SIPPEL: Well, that's just going to --

24 MR. COUZENS: -- last status report.

25 JUDGE SIPPEL: If I see that I'm going to get

1 worried. Look, I can't design this thing as well as counsel
2 who are closer to it, and have more of an interest in it than
3 I do. So, I'm not going to try and interject myself into the
4 process.

5 Let's start with a meeting, and have a first
6 meeting as soon as you can. And maybe you can -- I don't care
7 if you want to wire Mr. Couzens in by phone or, you know,
8 periodically tell him what's going on. I don't care how you
9 do it.

10 But I'm not, you can't hold back this stipulation
11 process. You can't do it, Mr. Couzens, because you can't
12 afford, you can't do this, and you're in the other part, the
13 other side of the county.

14 MR. COUZENS: My intention is the opposite.

15 JUDGE SIPPEL: I know it is.

16 MR. COUZENS: I would like to see the --

17 JUDGE SIPPEL: I'm just saying that --

18 MR. COUZENS: -- factual record develop --

19 JUDGE SIPPEL: I'm just saying that.

20 MR. COUZENS: -- quickly, not slowly.

21 JUDGE SIPPEL: Well, this is not going to be a
22 quick case.

23 MR. COUZENS: I understand that.

24 JUDGE SIPPEL: As I can see it, as I see it
25 developing. Okay?

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1 MR. COUZENS: Your Honor, I feel that where you're
2 headed today is going to slow it down tremendously.

3 JUDGE SIPPEL: Whether it does or doesn't, doesn't
4 make that much difference. It's not going to slow it down
5 that much. You're going to see in a couple of months where
6 it's going. And if it's not, you know, this --

7 Let's not put all the burden on Mr. Solomon. He's
8 going to offer propositions. The other side of the table
9 might not accept them. They might be unreasonable in not
10 accepting it. This thing can go all kinds of ways.

11 MR. ENGEL: Do you mind if I --

12 JUDGE SIPPEL: I'm sorry.

13 MR. ENGEL: Your Honor, may I be heard?

14 JUDGE SIPPEL: Yes, sir.

15 MR. ENGEL: So, again, this case is really, there's
16 two aspects to this case, Your Honor. There's the contest,
17 and the timeframe right around the contest. We think
18 stipulations are doable there.

19 But then there's the 20 year period where we don't
20 even know what questions to ask, because we don't, and
21 discovery that we would take, because we don't know what
22 evidence that they're going to introduce.

23 We don't know how many 5K fun runs the station had,
24 for example. We have no idea. We're operating in the dark.
25 So, if we have to push discovery off it's disadvantaging the

1 Bureau.

2 Now, I appreciate that Your Honor said that the
3 hearing date might get pushed to the right. And that's fine.
4 But again, if we don't do that, then we're going to be, we
5 might have to take dozens of depositions on issues that we
6 can't even foresee right now.

7 JUDGE SIPPEL: You're not going to do that. I
8 wouldn't let it happen. I wouldn't let it happen.

9 MR. SOLOMON: Your Honor, may I add something,
10 which is just --

11 JUDGE SIPPEL: Please, Mr. Solomon.

12 MR. SOLOMON: -- to assure Your Honor, and assure
13 the other parties, Entercom and its counsel intend to work
14 very constructively with the parties. We want to narrow the
15 case. We agree with respect to the contest issues, that
16 stipulations are doable.

17 The difficulty with discovery on the other issues
18 at the same time, as we discussed earlier, is it, it's two
19 issues. One, it takes attention away from focusing on the
20 stipulations. And two, we don't ourselves know the answers
21 to some of those questions.

22 So, Mr. Engel asked, how many 10K contests we had,
23 and when they were. That's what we're trying to go find
24 former employees, and things like that, to find out ourselves.

25 But we will work constructively. And I think the

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1 reporting approach, we certainly have no interest in having
2 to report -- We don't know whether it will be successful or
3 not. But we have no interest in a report being filed to
4 suggest that we're delaying in any way, or not working
5 constructively.

6 And we think we can get the stipulations, whether
7 it's on detailed facts, or a higher level, however it is, we
8 believe the stipulations are doable.

9 JUDGE SIPPEL: I mean, I can't think of a better
10 way to start a case. I've got confidence in Mr. Solomon's
11 side of the table, because I've experienced cases with him and
12 Mr. Kirk before. So, I'm not, I'm going to be shocked if I'm
13 getting resistance.

14 And I'd offer this up. I don't know whether it's,
15 whether I'm sticking my neck in the noose. But if there's
16 something that you can't stipulate to, and you think it would
17 be worthwhile to have a conference, even an informal
18 conference with me about it, I'll be glad to do that.

19 I mean, if that has some serious consideration.
20 But if both parties would like to use that facility. Because
21 unfortunately I do not have another judge I can assign to
22 mediate things. I admit. And so --

23 MR. ENGEL: I think, Your Honor, you've made it
24 clear how you want us to proceed. So, to talk about
25 scheduling then. You had proposed end of the month status

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1 reports. Would that be like one joint status report, Your
2 Honor?

3 JUDGE SIPPEL: We could do it either way. Joint
4 would be the best way. But if you want to do them
5 individually, that's up to you too.

6 MR. ENGEL: When would you like to receive the
7 first status report, Your Honor?

8 JUDGE SIPPEL: End of January. I mean, you know,
9 we have to allow for Thanksgiving and Christmas, or whatever
10 else you want to call it. So, you know, it's the holiday
11 season.

12 MR. ENGEL: Would it make sense, Your Honor, to
13 schedule, block off time for another pre-hearing conference,
14 status conference in early to mid-February then, Your Honor?

15 JUDGE SIPPEL: Let's, we'll decide that again in
16 January. Unless something comes up that is really bothering
17 your or Ms. Kane, and you want to bring it to my attention,
18 you want to have a conference.

19 I mean, the procedures are there. They're very
20 simple to do. And I'm very keenly, you know, I'm very aware
21 of this case. Believe me. And if I can help, I will help.

22 But I don't think I can help if you -- If this
23 process is producing results there's no way that I can, I have
24 to, I deserve to stay out of it, not to get involved in it.
25 But if you find somebody's dragging their feet, you think, or

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1 whatever other factor can come into play.

2 MR. ENGEL: And just to clarify, Your Honor, is it
3 your order that the, you're holding in abeyance, or you're
4 extending the deadlines for discovery with that --

5 JUDGE SIPPEL: Absolutely. Absolutely. I mean,
6 we'll get to that. Based on, I'm going to, the status
7 report's very important. If it reaches a point in the status
8 report where things are not moving along the way I, it should,
9 then I'm going to start setting dates. I mean, it's, except
10 I'm going to except Mr. Couzens from this, because he's in an
11 unusually, he's at a disadvantage.

12 MR. SOLOMON: So I understand, Your Honor. But
13 what you permitted to file are some limited interrogatories?

14 JUDGE SIPPEL: Yes. No more than 25.

15 MR. ENGEL: But the Bureau is precluded presently
16 from filing discovery, serving discovery, Your Honor?

17 JUDGE SIPPEL: Yes. But again --

18 MR. ENGEL: Thank you. I'm just trying to --

19 JUDGE SIPPEL: No. You're trying to pin it down.
20 And I don't blame you.

21 MR. ENGEL: Correct, Your Honor.

22 JUDGE SIPPEL: But I'm saying, what I'm
23 anticipating, and I'm really not cutting you off. You serve
24 those proposed admissions of fact to Mr. Solomon's side, okay.
25 And they're going to look at them.

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1 And they're going to respond to you in some way,
2 shape, or form at the first session. He's going to explain
3 things to you. You're going to have so much more information
4 than you have --

5 MR. ENGEL: I'm on the same page. I wasn't be
6 argumentative, Your Honor. I was just trying to clarify it
7 for you in this one occasion. That's all.

8 MR. SOLOMON: And just to be clear. We're not
9 objecting that you've --

10 MR. ENGEL: Right.

11 MR. SOLOMON: -- missed the deadline. I'm not
12 arguing that.

13 MR. COUZENS: But then, as far as formal requests
14 for admission, with the time deadline that's set forth in Part
15 1 would be waived by Your Honor, so that if they want to later
16 present requests for admission they may do so. Is that right.

17 JUDGE SIPPEL: I can put, look, I could put the
18 train back on the track any time. Right now I'm taking it off
19 the rails to repair things. If it doesn't work, then it goes
20 back on, and it's business as usual.

21 MR. KIRK: Your Honor?

22 JUDGE SIPPEL: Except for you, Mr. Couzens.
23 Because you say you have to give a few interrogatories. I'm
24 limiting it to 25. Will that work?

25 MR. COUZENS: That's fine.

1 MR. KIRK: And, Your Honor, on that point, if I
2 may? The interrogatories that we were discussing were with
3 regard to Exhibit 12. And he wanted to know who prepared the
4 exhibit, who has the most knowledge about Exhibit 12.

5 Consistent with your prior rulings I would like to
6 sort of limit those interrogatories to Exhibit 12, and sort
7 of not a wide ranging fishing expedition that takes us away
8 from trying to negotiate the stipulations that you had
9 encouraged.

10 JUDGE SIPPEL: Well, as for, I know, I think Mr.,
11 I think I know what Mr. Couzens is after. He wants a limited
12 number of, and he explained the type of information that he
13 was looking for. Are you satisfied with Mr. Kirk's --

14 MR. COUZENS: No. Exhibit 12 is an explanation of
15 the certification that the applicant has complied with the
16 public file requirements.

17 MR. KIRK: Oh.

18 MR. COUZENS: I'm entitled to test that
19 representation any way I want to test it. And certainly,
20 asking questions about Exhibit 12 would be one way. But no,
21 it's the certification that I wish to probe in
22 interrogatories.

23 MR. SOLOMON: And just to be clear. We'll obviously
24 look at the interrogatories. But you may have a dispute
25 before you as to the relevance of that, the designated issues.

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1 JUDGE SIPPEL: Well, that's fine. That's fine,
2 yes. I agree with that. That's manageable. Yes, it's
3 manageable. Okay. Now, so let's start. I'm not sure, I
4 thought this was going to go much easier than this.

5 Okay. Well, I'm going to go down these things
6 rather rapidly. But the first issue is here, is to determine
7 whether Entercom designed and conducted a contest that was
8 inherently dangerous.

9 Now, the burden is on Entercom as far as the
10 overall evidence is concerned. But who's going to carry the
11 burden on that one? The --

12 MS. KANE: The burden is on Entercom, Your Honor,
13 on all of the issues.

14 JUDGE SIPPEL: Well, how do they prove that it's
15 inherently dangerous? Wouldn't they have to prove that it's
16 not inherently dangerous?

17 MS. KANE: Yes, Your Honor that, their obligation,
18 pursuant to the Commission's rules, are to present their case
19 with regard to those issues first. So, I would presume that
20 they would come in and argue whether --

21 And again, if this is something they're going to
22 stipulate to, that's not something we know at this moment.
23 But just in the abstract, we would understand that the burdens
24 of proof are such that they would have to come in and say that
25 Entercom designed and conducted a contest that was not

1 inherently dangerous.

2 JUDGE SIPPEL: Fair enough, I guess.

3 MR. SOLOMON: Well, I guess what I would add,
4 consistent with what we were discussing before, because I
5 think much of this discussion may be premature. Because if
6 we stipulate then the burden, or the evidentiary issues --

7 I mean, it's certainly the case that the Commission
8 placed the burden on us. To the extent we might have
9 objections to that as things proceed, it may be rendered moot
10 by stipulations.

11 JUDGE SIPPEL: Okay. I'm trying to just sit down.
12 I'm just trying to educate myself. Now, we know that the,
13 there's a trial record on much of this in Sacramento. Is that
14 right? Is it in Sacramento? Is that where they tried it?

15 MR. COUZENS: In Sacramento County, yes.

16 JUDGE SIPPEL: Yes. But I don't think, I don't
17 feel bound by it. I mean, I don't feel bound by its findings,
18 until I see them of course. But there's no res judicata
19 principal as applied to it, to a facts situation like that.
20 You would disagree with that, Ms. Kane?

21 MS. KANE: No, Your Honor.

22 JUDGE SIPPEL: All right.

23 MS. KANE: Completely different legal issue.

24 JUDGE SIPPEL: Exactly right.

25 MR. COUZENS: The court in Sacramento knew nothing

1 about the trusteeship concept and the licensing scheme that
2 we have here. It's completely separate from what they were
3 asked to rule on.

4 JUDGE SIPPEL: Who's asking me? Say that again.
5 The trust --

6 MR. COUZENS: There was a jury trial in the
7 wrongful death action.

8 JUDGE SIPPEL: Yes.

9 MR. COUZENS: They knew next to nothing about FCC
10 law.

11 JUDGE SIPPEL: I assume so.

12 MR. COUZENS: Trusteeship, licensing, all of that.

13 JUDGE SIPPEL: I assume so.

14 MR. COUZENS: Well, we have to get into that,
15 because that's the core of this case.

16 JUDGE SIPPEL: Well, I thought I just made it, I
17 thought I made that, not clear, but, I mean, I thought I laid
18 the groundwork for that.

19 In other words, I don't want to have the argument
20 being made here or down the road that that's res judicata,
21 what happened in the trial court. But it is going to be the
22 basis for stipulations. I'm going to do that. Do you
23 understand me? You look quizzical.

24 MR. COUZENS: I think that Entercom was very well
25 represented throughout that trial. And they were probably

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1 estopped from denying facts that were found as facts in that
2 case.

3 JUDGE SIPPEL: And that's a different concept.

4 MR. COUZENS: Yes.

5 JUDGE SIPPEL: I'm just making the general
6 statement. That's all I am. That's not res judicata. Any
7 other principles that you want to get, if I don't --

8 First of all, I don't envision that we're going to
9 get into that anyway, the way I'm hearing this stipulation
10 process. This seems to be the easy part of the stipulations,
11 this A through G. It's the other stuff that's going to be
12 more difficult. I don't know. I'm just going to leave it at
13 what I said.

14 So, okay. So, I'm going to move off these issues,
15 the A through G issues. We know what Mr. Couzens is after.
16 He's after the compliance with H, whatever it -- well.

17 You say there's some kind of, is there a document
18 that gets filed on that? Is this a question of some, keeping
19 records at the station, or something like that, Mr. Couzens?

20 MR. COUZENS: Well, no. My concern with the public
21 file is triggered by H.

22 JUDGE SIPPEL: That's what I was looking at. Do
23 you want to know who prepared H?

24 MR. COUZENS: Well, H in the HDO.

25 JUDGE SIPPEL: Yes. Oh, I thought H -- I'm sorry.

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1 I'm looking at this list. All right.

2 MR. COUZENS: Totality of circumstances. I think
3 that we're talking about a license renewal.

4 JUDGE SIPPEL: Yes. I got that.

5 MR. COUZENS: And the compliance with the public
6 file requirements, particularly as it may reflect on this
7 incident, before or after, would be very relevant. So, that's
8 what I'm probing, I intend to probe.

9 JUDGE SIPPEL: Well, let's see what, let's go with
10 the 25 interrogatories. You present them the way that you
11 want to present them.

12 MR. COUZENS: Yes.

13 JUDGE SIPPEL: And let's see what response you get.

14 MR. COUZENS: That's fine. Yes.

15 JUDGE SIPPEL: Okay. So then, so, what can, can
16 you give us as best explanation you can, in a generic way, of
17 what the type of evidence you perceive, or you anticipate is
18 going to be gathered and prepared?

19 MR. SOLOMON: Yes, Your Honor.

20 JUDGE SIPPEL: Prepared to --

21 MR. SOLOMON: And again --

22 JUDGE SIPPEL: -- be offered in evidence.

23 MR. SOLOMON: We're at the early stages.

24 JUDGE SIPPEL: Yes.

25 MR. SOLOMON: So I'm speculating to some extent.

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1 But I think it will be evidence such as meritorious
2 programming, which could include public interest programming,
3 PSAs, things like that.

4 Broadly speaking, community service if the station
5 sponsored, as Ms. Kane referred to, or Mr. Engel, the station
6 sponsored various charitable events, was involved with various
7 community groups. A variety of public interest factors to
8 show that the station served the community as the licensee.

9 JUDGE SIPPEL: Okay.

10 MR. SOLOMON: And that could include both witnesses
11 from the station who were at the station at the time, and are
12 aware of what the station did. It could also include other
13 community witnesses, whether it's community leaders or
14 representatives of charities, and that sort of thing.

15 JUDGE SIPPEL: Public witnesses, yes. So, as I
16 said, at a point you're going to know who these people are.
17 And at a point you can, I think you, I believe you can
18 rationally make a better decision on who you want to depose,
19 and who you don't, if this process works. If it doesn't, then
20 all bets are off.

21 MS. KANE: Your Honor, it's unclear to me that any
22 of that's going to be included in the stipulations. That's
23 why, I mean, that's why we had originally asked for there to
24 be, allowing us to get discovery on those very types of
25 issues, which are not known, and which are not set forth in

1 the HDO.

2 And to limit the stipulations, the initial process
3 on stipulations, to the facts that are known. So that the
4 Bureau can actually start to develop it. We have no idea,
5 because there's no timeframe now for discovery, as to when the
6 Bureau might learn any of this information.

7 There's no formal process now, in the absence of
8 discovery, for the Bureau to know, how many, what kind of
9 programming we're talking about, when this programming was
10 aired, who these people are that might be testifying. None
11 of that is going to be known until several months from now at
12 the earliest.

13 JUDGE SIPPEL: Do you have discovery documents
14 prepared that's going to ask for that information?

15 MS. KANE: Yes, Your Honor.

16 MR. SOLOMON: Okay. The difficulty is, we don't
17 know. So --

18 MS. KANE: But, Your Honor, at some point they
19 should have to know. And --

20 MR. SOLOMON: And I agree with that. At some
21 point, when we develop our case. And we can certainly, you
22 know, communicate with you informally. We understand that you
23 may have discovery on those issues. And we're not trying to
24 keep you from doing that generically.

25 The point, our concern is simply that A, for us to

1 be distracted from working on the stipulations, and working
2 cooperatively at the beginning while we're trying to build our
3 case. And then responding to discovery, that's distracting
4 from the stipulations.

5 And two, it's going to lead to pleadings and a
6 variety of back and forth when we're saying, well, we can
7 answer one, subpart C, but we don't know one subpart A, and
8 D through F, and two and four. And it's very, in my view,
9 unproductive, Your Honor.

10 MS. KANE: Your Honor, I'm sorry, but I do have a
11 hard time believing it would be distracting from the
12 stipulations. This is not a small law firm. They have many
13 people who could be working on these things at the same time.

14 So, I think it's slightly disingenuous to say that
15 they're going to be over burdened by handling stipulations and
16 discovery that they're necessarily going to have to prepare
17 to establish their case.

18 And the Bureau should be entitled to receive that
19 information in a somewhat timely manner. Otherwise, there's
20 absolutely no way that we could even contemplate going to
21 trial in mid-July --

22 JUDGE SIPPEL: Well, I --

23 MR. KIRK: -- with an admissions session on
24 documents that we don't even know what they would be looking
25 like.

1 JUDGE SIPPEL: I'm trying to be as disinterested
2 as I can on this point. But I obviously have a interest in
3 seeing that process started. Now, if Mr. Solomon is being
4 perfectly honest with you, I'm sure he is, he doesn't --

5 You're going to give him these requests to admit,
6 and he's going to tell you, not he personally, but the firm's
7 going to come back and say, we don't know now. But we'll let
8 you know when we find out.

9 And again, I can play a part in that. If it's
10 dragging on too long I can set deadlines. And as I said, I
11 can --

12 MS. KANE: But we've asked for deadlines, Your
13 Honor, for the stipulations. If that's going to hold up all
14 of this discovery then we, I think there has to be a deadline
15 by which the Bureau should be entitled to start discovery on
16 some of these other issues for which stipulations are very
17 unlikely.

18 MR. KIRK: Your Honor, we're --

19 JUDGE SIPPEL: Let's, yes.

20 MR. KIRK: We're retreading the same issues.
21 You've asked for a status report at the end of January to see
22 how far we've gotten on all of these issues. And I think
23 that's the most productive way to move forward.

24 A lot of these issues could be moot if we've
25 reached stipulations, narrowed the issues. And we'll all have

1 a better feel as to where the case is at that point.

2 JUDGE SIPPEL: Yes. This is, this transcript is
3 getting more and more expensive as we go.

4 MR. COUZENS: Could I ask --

5 JUDGE SIPPEL: Just a second --

6 MR. COUZENS: -- counsel a question here?

7 JUDGE SIPPEL: Just a second, Mr. Couzens.

8 MR. COUZENS: I'd like to ask --

9 JUDGE SIPPEL: Just one minute. Just one minute.
10 I'm going to do that. But the first status report should
11 have, in addition to what's been going on, a summary of what's
12 been going on, is an estimate of the amount of time that this
13 process, in light of how it's going how long you feel it's
14 going to be before you can conclude it.

15 And I'm not going to draw the ground rules on this.
16 Because, but I'm sure you're going to get an honest answer,
17 you know. I hope I'm not wrong.

18 MR. ENGEL: Well, Your Honor, I mean, to manage
19 expectations, with very few exceptions our request for
20 admission are confined to the four corners of the HDO. So,
21 if there is a fact in the HDO that is not admitted to, the
22 Bureau will immediately file a motion to lift the stay on
23 discovery. We'll need to move forward.

24 But those, we feel that, based upon what are the
25 limited materials that we have, squaring those up with what's

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